

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (hereafter referred to as "Agreement") is entered into, by and between JUSTIN BEAL (hereafter referred to as "Plaintiff" or "Employee") and the NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, (hereafter referred to as the "Defendant" or "Department"), (hereinafter collectively referred to as "Parties"). The Parties agree that they desire to settle fully and finally all employment relationship matters between them, including, but not limited to, any differences that might have arisen out of the Employee's employment with the Department and the separation of Employee from employment with the Department. This Agreement sets forth their complete agreement and understanding regarding the Employee's employment with the Department.

NOW THEREFORE, in consideration of the covenants and promises herein contained, and for other valuable consideration, the receipt of which is hereby acknowledged, the following Agreement is entered into by the undersigned Parties to settle any and all claims involving Employee's employment with the Department, including claims raised in a federal lawsuit filed by Employee in the United States District Court for the Western District of North Carolina, case number 1-17-cv-113.

AGREEMENT

1. Reinstatement.

(a) The Department shall reinstate Employee as a career State employee to a Health Care Technician I position, working first-shift, at the J. Iverson Riddle Developmental Center (the "Riddle Center") and shall rescind the termination of Employee's employment which occurred on 4 February 2015. By accepting this reinstatement, Employee acknowledges that, as part of his usual duties, he will be required to work with patients of the Riddle Center, some of whom may exhibit violent or physically abusive behaviors. The Department, by entering into this Agreement, does not warrant that Employee will be prevented from having to work with any patients who may be served by the Riddle Center or that Employee will not be exposed to patients who may exhibit violent or physically abusive behavior. The Employee acknowledges, by entering into this Agreement and by accepting reinstatement, that he has been cleared to work in, and can perform the duties of, a Health Care Technician I position serving the types of patients customarily served by the Riddle Center. A position description outlining the duties of a Health Care

Technician I at the Riddle Center is attached to this Agreement and incorporated herein as Attachment 1.

(b) As part of Employee's reinstatement, the Department agrees to furnish Employee with back pay and benefits (including leave benefits, state paid employee health insurance, if elected, in accordance and authorized by North Carolina law, and employer contributions into the N.C. State Retirement System) from 5 February 2015 to the date of reinstatement. Back pay shall be calculated pursuant to North Carolina law, regulations, and policy, including 25 NCAC 01J.1306 and Section 7 of the State Human Resources Manual, and will be subject to an offsetting for earnings and Unemployment Insurance benefits, if any. Retirement contributions are based on the total, unreduced amount of gross back pay. The gross back pay amount is subject to customary tax withholdings and Employee retirement contributions. Unreduced gross back pay for the period of 5 February 2015 through 30 September 2018 is One Hundred One Thousand Seven Hundred Sixty-Two Dollars and 56/100 (\$101,762.56). Employee's earnings for purposes of offsetting the gross back pay are Forty-Three Thousand Nine Hundred Eighty-One Dollars and 45/100 (\$43,971.45). Employee shall submit any and all information required to apply for back pay and the completion of State Human Resources Form PD-14, which the Department will complete and present to the Employee for completion and signature. The Department and Employee each will prepare the necessary paperwork to process back pay in a reasonable and timely fashion. Back pay is reviewed and authorized by the Office of State Budget and Management and the North Carolina Retirement System. As such, the Department believes that payment of back pay can be made in 90 days from the date it receives the signed PD-14.

(c) The Department agrees that upon Employee's reinstatement, Employee shall be an "eligible employee" under the Family and Medical Leave Act (FMLA), who has worked for the Department for at least 12 months, for at least 1,250 hours during the 12-month period immediately preceding the date of reinstatement, and at a worksite where the Department employs at least 50 employees. The Department agrees that the fact that Employee did not actually work during the period from 5 February 2015 to reinstatement will not operate as a bar to his eligibility for FMLA.

2. **Settlement Payment.** The Department will pay Employee a single lump sum payment in the total amount of Twenty-Four Thousand Two Hundred

Thirty-Three Dollars and 37/100 cents (\$24,233.37), in settlement of any claims for damages brought in the aforementioned federal lawsuit (1:17-cv-113). This payment shall be made within thirty days from receiving the signed agreement and signed form PD-14 from Employee. The Department will issue the required tax Form 1099 for purposes of this payment. This settlement payment, in conjunction with the back pay owed as outlined in Paragraph 1(b), and the payment of attorney fees constitute the full and complete settlement of any and all claims for wages, salary, commissions, compensatory, general, special and punitive damages, injunctive or equitable relief, attorney's fees, interest, expenses, and costs.

3. **Dismissal and Disavowal of Any Further or Additional Claims.**

No later than ten (10) business days following receipt of the payments, Employee agrees to withdraw, dismiss and terminate, with prejudice, the aforementioned federal lawsuit (1:17-cv-113) filed with the United States District Court for the Western District of North Carolina.

4. **No Admission.** This Agreement and compliance with this Agreement shall not be construed as an admission on the part of the Department or Employee of any violation of the rights or interests of Employee or of any other individual or entity. Nor shall the Agreement or compliance with the Agreement be construed as an admission by the Department or Employee of any violation of any order, ruling, law, statute, regulation, contract or covenant, express or implied, on the part of the Department, including its current and/or former directors, supervisors, employees, agents, or representatives.

5. **Waiver and Release.**

(a) Except as stated herein, based upon the consideration recited above and the mutual releases granted herein, Employee, on behalf of himself, successors and assigns, fully releases the Department, its successors, assigns, subsidiaries, affiliates, officers, directors, employees, agents and representatives, from any and all liability, costs, expenses and remedies of any type, by reason of any act or omission arising out of or in connection with the Employee's employment with or separation from employment by the Department, including without limiting the generality of the foregoing: claims under the North Carolina State Human Resources Act, N.C. Gen. Stat. § 126-1, et seq.; Title VII of the Civil Rights Act of 1964, as amended (Title VII); the Age Discrimination in Employment Act of 1967 (ADEA); the Civil Rights Act of 1866 as amended (42 U.S.C. § 1981); the Americans with Disabilities Act, as

amended (ADA); the Family and Medical Leave Act, as amended (FMLA); the North Carolina Retaliatory Employment Discrimination Act, as amended (REDA); or any other federal, state, or local statute or regulation regarding employment, discrimination in employment, or the termination of employment, worker's compensation, occupational health and safety, or environmental protection, and federal or state common law related to employment contracts, wrongful discharge, or any other matter arising out of, or relating to, Employee's employment at the Department.

(b) Employee agrees not to institute or pursue any lawsuit, grievance, charge of discrimination, or proceeding in any forum that is in any way based upon or arising out of any matter involving Employee and the Department from the original date of his employment with the Department through the execution of this Agreement; and further Employee agrees to dismiss with prejudice and withdraw, in addition to what is described above, any other active lawsuits, charges of discrimination, complaints, or other actions with any state or federal agency based upon the said matters. The Parties do not waive the right to enforce the terms of this Agreement

6. **Obligation for Attorney's Fees and Costs to Date.** The Department agrees to pay the total amount of Fifty-Five Thousand Seven-Hundred and Sixty-Six Dollars and 63/100 Cents (\$55,766.63) in attorney's fees and costs to Employee's attorney. Within thirty days following Defendant receiving from Plaintiff the signed Agreement and signed form PD-14, the Department shall issue a check for attorney's fees and costs in the total amount of Fifty-Five Thousand Seven-Hundred and Sixty-Six Dollars and 63/100 Cents (\$55,766.63) to the law firm of Grimes Teich Anderson, LLP. Defendant shall pay the mediator's fee in connection with this matter. Except as otherwise stated, the Parties agree that each will assume liability, if any exists, for their own attorney's fees and costs incurred in the prosecution or defense of this matter.

7. **Enforcement.** The Department and Employee agree that this Agreement may be used as evidence only in a subsequent proceeding to enforce the provisions of this Agreement.

8. **Construction of Agreement.** Employee warrants that in agreeing to the terms of the Agreement, he has not relied in any way upon any representations or statements of the Department regarding the subject matter hereof or the basis or effect of the Agreement other than those representations or statements contained

herein. The Agreement shall be construed in accordance with North Carolina law. The Parties confirm their understanding that this Agreement may be subject to review and/or approval by the North Carolina Office of State Human Resources and the North Carolina Office of Budget and Management.

9. **Entire Agreement.** It is understood and agreed that this Agreement expresses a full and complete settlement of any and all claims, the same having been denied, and regardless of the adequacy of the terms of this Agreement is intended to avoid any possible litigation, hearings, reviews, investigations, or controversies. This Agreement contains the entire agreement between the Department and Employee with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each. In the event that one or more of the provisions of this Agreement shall for any reason be held to be unenforceable, this Agreement shall be revised only to the extent necessary to make such provision(s) legal and enforceable.

10. **Complete Paperwork to Effectuate Agreement.** The Parties agree to execute any and all other documents necessary or appropriate to effectuate this Agreement. Duplicate originals of the Agreement shall be signed and approved by the Parties with each party retaining an original. For the convenience of the Parties, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

11. **Binding Effect of Agreement on Successors in Interest.** This Agreement shall be binding upon and shall be for the benefit of the Department, its successors, assigns, agents, representatives and employees (both past and present in their official capacity or individual capacity) and the Employee, as well as his respective heirs, agents, representatives, successors and assigns.

12. **Public Record, Confidentiality, and Nondisclosure.** The Parties acknowledge that by law this agreement is considered to be a public record subject to disclosure pursuant to the North Carolina Public Records Act found at Chapter 132 of the North Carolina General Statutes. Except as required by law pursuant to a public records request, neither party shall disclose the contents and terms of this Agreement except as necessary to carry out the terms of this Agreement.

13. **Severability of provisions.** If any provision of this Agreement as applied to any Party or to any circumstance shall be deemed to be illegal, invalid or

unenforceable, such illegality, invalidity, or unenforceability shall not affect the remainder hereof or its validity or enforceability in any jurisdiction.

14. **Acknowledgement.** Employee represents and warrants that he has been given a reasonable period of time to consider this Agreement; that he has read the entire Agreement; that he has had sufficient time to consult an attorney about the meaning and intent of the Agreement; and that he enters into this Agreement of his own free will, without coercion, undue influence, threat, or intimidation of any kind, with the intention of being legally bound to its terms.

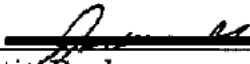
15. **Authorization.** Employee warrants that the Department representative, who signs this Agreement, has the authority to execute the Agreement on behalf of the Department. Likewise, the Department warrants that the representative who signs this Agreement has the authority to execute the Agreement on behalf of the Department.

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EXECUTED AND AGREED UPON AS FOLLOWS:

JUSTIN BEAL, executed the Agreement on the day and year noted below.

Dated: 9-29-18


Justin Beal
Plaintiff/Employee

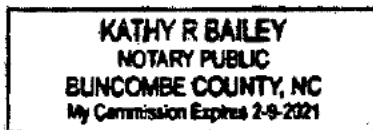
NORTH CAROLINA

BUNCOMBE COUNTY

On this the 28th day of September, 2018, before me personally appeared Justin Beal, to me known to be the person described herein, and who executed the foregoing instrument; and he acknowledged that he voluntarily executed this Agreement.


Notary Public

My commission Expires: Feb 9 2021



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